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 RICHARD W. WIERING  
 U.S. DISTRICT COURT  
 NO. DIST. OF CA. S.J.  
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## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

C07 03149 HRL

DON BORG,

Plaintiff,

vs.

13 PRINCIPAL LIFE INSURANCE  
 14 COMPANY, TARGET  
 CORPORATION, and DOES 1 through  
 20, inclusive,

Defendants.

No. \_\_\_\_\_  
 COMPLAINT FOR DAMAGES  
 (ERISA)

BY FAX

22 FIRST CAUSE OF ACTION: VIOLATION OF ERISA  
 23 TITLE 29 US CODE, CHAPTER 18, ET SEQ.

24 1. Plaintiff, Don Borg, is a citizen of the U.S. who at all times herein mentioned resides  
 25 in San Mateo County, California. He is a handicapped individual protected by ERISA.

26 2. Defendants, PRINCIPAL INSURANCE CO., and TARGET CORPORATION. are all  
 27 business entities operating in this county and state and are subject to suit under the ERISA.

28 3. Defendant TARGET employed plaintiff on September 25, 2000 and transferred him

1 as Store Team Leader, i.e., manager, to the Mountain View, California store on June 1, 2001.

2 4. The aforementioned defendants were the agent and employee of each of the remaining  
3 defendants and, in doing the things hereinafter alleged, were acting within the course and scope  
4 of such agency and employment.

5 5. VENUE: The unlawful practice complained of herein occurred in this district.

6 6. JURISDICTION is based on Employee Retirement Security Income Act, ("ERISA"),  
7 29 U.S.C. §1001, et seq., and 28 U.S.C. §1331.

8 7. Plaintiff became disabled on February 6, 2003, and became eligible to receive long  
9 term disability benefits under his policy with defendants.

10 8. On or about the following dates in 2006, including September 7, 2006 and  
11 September 10, 2006, plaintiff filed four specific claims for long term disability benefits (LTD),  
12 and the medical status of his situation was such that the medical records and evidence of  
13 disability had changed and was substantially different, and more ominous medically, than the  
14 medical records had been when defendant rejected plaintiff's original ERISA claim. Because  
15 plaintiff filed his Long-Term Disability claims 4 times in 2006 based on four different sets of  
16 medical situations, body parts and records, defendant violated his ERISA rights by not granting  
17 him the dispensation of LTD. Defendants' interminable cunctation, coupled with a cynical and  
18 rote form of "automatic LTD denials," violated plaintiff's rights under ERISA. During the  
19 interregnum between plaintiff's four separate claims and his prior claim, plaintiff suffered  
20 additional injuries and complications which were not and could not have been known to  
21 defendants when they rejected his original claim. They did not have the medical evidence and did  
22 not seek it, blithely and mindlessly rejecting his claims *ipso facto*. Plaintiff demonstrated, and the  
23 medical records proved, that he was totally and permanently disabled and unable to perform  
24 duties of a Target store manager ("team leader") because said job required arduous physical  
25 stamina and effort, which plaintiff's orthopedic injuries to shoulder, back etc. Rendered  
26 impossible. The defendants refused to grant plaintiff LTD status. These actions by defendants  
27 and each of them violated the ERISA.

28 9. As a proximate result of defendants' conduct as explained above, plaintiff has been

1 damaged financially and emotionally, has suffered pain, has lost income and other benefits,  
2 health insurance, life insurance, pension plan, has suffered depression, and has incurred great  
3 expenses, and other health, employment and career benefits, as well as lost potential income  
4 earning ability, all to his detriment in a sum according to proof.

5 10. The foregoing conduct of defendants, and each of them, was at all material times  
6 malicious and intentional, and entitles plaintiff to an award of punitive damages. Also plaintiff  
7 requests an award of attorney fees under the federal ERISA laws.

8 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

9 ***SECOND CAUSE OF ACTION: MISREPRESENTATION (FRAUD)***

10 11. Paragraphs 1 through 10 inclusive are reiterated here and incorporated by reference.

11 12. In or about December 20, 2006, plaintiff was induced by defendants' fraud to enter  
12 into a settlement agreement with defendants as to a prior LTD claim. The plaintiff was  
13 fraudulently induced because, *inter alia*, defendants concealed several actions of the procedure  
14 used in their analysis and appeal process in rejecting his LTD claim. Plaintiff was also defrauded  
15 into signing the agreement because defendants' counsel and agents told him numerous points vis  
16 a vis defendants' policies toward claims.

17 13. Plaintiff relied on defendants' misrepresentations to his detriment. He settled for less  
18 than he should have gotten.

19 14. Plaintiff is entitled to bring this action notwithstanding the prior settlement  
20 agreement, because the latter was induced by fraud.

21 15. As a proximate result of defendants' conduct as explained above, plaintiff has been  
22 damaged financially and emotionally, has suffered pain, has lost income and other benefits,  
23 health insurance, life insurance, pension plan, has suffered depression, and has incurred great  
24 expenses, and other health, employment and career benefits, as well as lost potential income  
25 earning ability, all to his detriment in a sum according to proof.

26 16. The foregoing conduct of defendants, and each of them, was at all material times  
27 malicious and intentional, and entitles plaintiff to an award of punitive damages. Also plaintiff  
28 requests an award of attorney fees under the federal ERISA laws.